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power but to declare it, and leave question of policy to the Legislature, where it properly belongs.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 760.]

Error to Corporation Court of City of Roanoke.

Motion by one Posey and another, as against the Commonwealth, to correct assessment of a collateral inheritance tax. To review judgment of refusal, movants bring error. Affirmed.

Hart & Hart, for the plaintiffs in error.

Attorney-General Jno. R. Saunders and Assistant Attorney-General, J. D. Hank, Jr., for the Commonwealth.

ÆTNA INS. CO. *v.* ASTON.

Sept. 19, 1918.

[96 S. E. 772.]

1. Appeal and Error (§ 1002*)—Verdict—Conclusiveness.—Questions of fact, resolved adversely to the defendant on conflicting evidence, were concluded by the verdict.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

2. Insurance (§ 658 (14)*)—Proofs of Loss—False Statements—Question for Jury.—Whether insured made false statements in making his proofs of loss under a fire insurance policy was a question for the jury under all the facts and circumstances of the case.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 424.]

3. Insurance (§ 344*)—Fire Insurance—Forfeiture—Agreement to Assign.—Under a fire insurance policy, void if assigned before loss, a mere agreement to assign it will not work a forfeiture.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 87.]

4. Insurance (§ 343*)—Fire Insurance—Interest in Proceeds of Policy—Assignment.—After a risk has terminated by fire the insurer's interest becomes a chose in action, which he may assign without the consent of the insurer, notwithstanding clause forbidding assignment without consent of insurer.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 87.]

5. Insurance (§ 328 (2)*)—Fire Insurance—Right of Possession.—If, at the time of fire, there had been no change in the title and ownership of the property, it necessarily follows that there had been no change in the right of possession, as distinguished from mere occupancy.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 420.]

6. Specific Performance (§ 14*)—Contracts—Assent of One Not Party.—On principles of public policy a party could not enforce a contract to exchange his property for farm property, where the wife of the other party was a part owner of the farm, and had a dower interest in the remainder of the land, and had not signed the contract.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 524, 628.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes

7. Specific Performance (§ 14*)—Contract—Conditions.—A contract for the exchange of properties could not be enforced by either party, where it was conditioned and dependent upon the will of third persons, such as the lien creditors of both parties.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 532.]

8. Insurance (§ 328 (2)*)—Fire Insurance—Change of Possession.—The change of possession, contemplated by a policy making it voidable on a change of possession without the insurer's consent, is a change in the lawful right of possession, as distinguished from mere occupancy.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 79.]

9. Insurance (§ 328 (5)*)—Exchange of Property by Insured—Right of Recovery.—After the contract for exchange of properties, which the insured could not enforce, and by which the other party was not bound, the insured might recover for a loss under a fire insurance policy, though the other party had possession, and had paid as much as one-fifth of the agreed price.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 420.]

10. Insurance (§ 668 (5)*)—Fire Insurance—Change of Occupancy—Increase of Hazard—Question for Jury.—Under a fire insurance policy permitting a change of occupants without an increase of hazard, it is for the jury to determine whether a change increased the risk.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 424.]

11. Insurance (§ 328 (5)*)—Fire Insurance—Recovery on Policy—Interest of Beneficiary.—A mere contract to sell insured property on conditions does not affect the validity of the policy, and for a loss before performance of the conditions insured may recover, though the conditions are subsequently performed, and, if it was agreed to assign the policy to the purchaser the judgment will inure to his benefit.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 420.]

12. Insurance (§ 624 (4)*)—Fire Insurance—Sale of Property—Recovery—Rights of Purchaser.—Though, under Code 1904, § 2860, a party in possession of insured property, who was to receive an assignment of the policy, might have sued in his own name, his failure to do so would not bar a recovery for his benefit.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 111.]

13. Insurance (§ 672*)—Judgment.—Where insured recovered in suit for benefit of party in possession of insured property, who was to receive an assignment of the policy, the judgment might be marked and rendered for the latter's benefit even after verdict.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 124.]

Error to Corporation Court of Bristol.

Motion for judgment upon a fire insurance policy by W. H.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Aston against the Ætna Insurance Company. Verdict for plaintiff, motion to set aside the verdict overruled, and judgment for plaintiff, and defendant brings error. Affirmed.

John W. Price and Caskie & Caskie, for the plaintiff in error.

White, Penn & Penn, and *J. J. Stuart*, for the defendant in error.

GREGORY et al. v. HUBARD, County Clerk.

Sept. 19, 1918.

[96 S. E. 775.]

1. Mandamus (§ 16 (1)*)—Right to Writ—Ineffectual Relief.—

Where petitioners for mandamus to obtain a certificate of election as members of a town council had already qualified as members, and where, under Code 1904, § 1030, the council was the judge of the election and returns of its members, the object of the petition had been accomplished as to them, and their petition will be refused.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 519.]

2. Elections (§ 259*)—Meeting of Commissioners—"Public Place."

—Under Code 1904, § 135, requiring that the meeting of election commissioners shall be in public, a meeting in office of county clerk is in a "public place," and none the less so because no one is present except the commissioners, the deputy clerk, and counsel for persons elected.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Public Place. For other cases, see 5 Va.-W. Va. Enc. Dig. 27.]

3. Elections (§ 259*)—Canvass of Vote—Directory Statute.—Code 1904, § 133, requiring commissioners of election to canvass returns on second day after election, is directory, and failure to comply therewith will not deprive a mayor of the benefit of an election, as the commissioners may thereafter canvass returns, or, if they fail to do so, may be compelled.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 27.]

4. Mandamus (§ 77 (2)*)—County Clerk—Certificate of Election.

—Where county clerk, required by Code 1904, § 137, to "immediately make out" a certificate of election as mayor of a town and to deliver it to him on his request, failed to do so without good reason, mandamus will lie to compel him to issue and deliver the certificate.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 527, 535.]

Application for mandamus by E. D. Gregory, B. H. Barnes, and C. T. Apperson against W. J. Hubbard, County Clerk of Buckingham County. Writ refused as to petitioners Barnes and Apperson, and awarded to petitioner Gregory.

Moon & Pitts, for the petitioners.

(No appearance for respondent.)

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.